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Government of Kerala
1977

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXII] **Trivandrum, Thursday,** **17th March 1977 / 26th Phalguna 1898** **[No. 175**

GOVERNMENT OF KERALA

Agriculture (Forest Special) Department

NOTIFICATION

No. 3982/FS1/77/AD. *Dated, Trivandrum, 15th March 1977.*

S. R. O. No. 244/77.—In exercise of the powers conferred by section 14 of the Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 (7 of 1974), the Government of Kerala hereby make the following further amendment to the Kerala Restriction on Cutting and Destruction of Valuable Trees Rules, 1974 issued under Notification G. O. MS. 48/74/AD dated the 1st March, 1974 and published as S. R. O. No. 167/74 in the Kerala Gazette Extraordinary No. 235 dated the 2nd March 1974, namely:—

AMENDMENT

In the said rules, in rule 3, for the words "Every applicant", the words "Except in the case of a department of the State Government or the Central Government, every applicant" shall be substituted.

By order of the Governor,

K. V. VIDYADHARAN,
Additional Secretary.

33/844/MC.

Explanatory Note

(This does not form part of the notification).

Valuable trees which cause hindrance to public property like telephone lines, electric lines will have to be cut and removed by Government Departments like the Kerala State Electricity Board and P & T, in public interest. It has been decided to exempt Government Departments from paying the application fee.

The above notification is intended to achieve the above purpose.

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TRIVANDRUM, 1977.

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GOVERNMENT OF KERALA

Law (Leg. C) Department

NOTIFICATION

No. 4699/Leg. C3/77/Law. *Dated, Trivandrum, 17th March, 1977/ 26th Phalguna, 1898.*

The following Ordinance promulgated by the Governor on the 16th day of March, 1977, is hereby published for general information.

By order of the Governor,

K. VISWANATHAN NAIR,
Additional Law Secretary.

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TRIVANDRUM, 1977.

S3/842/MC.

ORDINANCE No. 6 OF 1977

THE ENGINEERING TECHNICIANS' CO-OPERATIVE SOCIETIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ORDINANCE, 1977

Promulgated by the Governor of Kerala in the Twenty-eighth Year of the Republic of India.

AN

ORDINANCE

to provide for the acquisition of the undertakings of the Kerala State Engineering Technicians (Workshop) Industrial Co-operative Society Limited S. Ind (ST) No. 1 and the societies promoted by it and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS the Kerala State Engineering Technicians (Workshop) Industrial Co-operative Society Ltd., S. Ind (ST) No. 1, a society deemed to be registered under the Kerala Co-operative Societies Act, 1969, with the whole of the State of Kerala as the area of its operation, and having as its object the taking up and running of industrial projects with a view to providing employment opportunities to engineers, technicians, etc., based on the concept of share-participation-cum-employment (hereinafter referred to as the ENCOS) took up the implementation of a number of industrial projects;

AND WHEREAS the ENCOS had promoted the registration of the Kerala Auto Industrial Co-operative Limited IND (EP) No. 1, Trivandrum, the Co-operative Scooters Limited IND (SP) No. 2, Alleppey and the Co-operative Foundries Limited S. IND (P) No. 46, Ottappalam (hereinafter referred to as the promoted societies) for implementing the industrial projects undertaken by the ENCOS;

AND WHEREAS the Government of Kerala and the Planning Commission which have been financing the said projects have come to the conclusion that on account of organisational, financial and managerial problems it has become impossible for the ENCOS and the promoted societies to implement the industrial projects undertaken by the ENCOS;

AND WHEREAS the functioning of the ENCOS and the promoted societies have come to a standstill on account of the financial crisis facing them and a substantial portion of the assets of the societies consisting of machinery and implements is lying idle;

AND WHEREAS the continued existence of the ENCOS and the promoted societies is causing huge losses to those societies, which are receiving financial assistance from the Government;

AND WHEREAS it is expedient in the public interest to dissolve the ENCOS and the promoted societies and to acquire their undertakings with a view to making use of the assets and other facilities of such undertakings for productive purposes;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Engineering Technicians' Co-operative Societies (Acquisition and Transfer of Undertakings) Ordinance, 1977.

(2) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which this Ordinance comes into force;

(b) "Director of Industries and Commerce" means the Director of Industries and Commerce of the State of Kerala and includes any officer authorised by the Government to perform the functions of the Director of Industries and Commerce under this Ordinance;

(c) "Engineering Technicians' Co-operative Society" or "society" means the ENCOS or any of the promoted societies;

(d) "member-employee" means an employee of a society who has taken shares in the society for the purpose of securing employment in the service of the society;

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "share" means a share in the capital of the society.

3. *Undertakings of Engineering Technicians' Co-operative Societies to vest in the Government.*—On the appointed day, the undertakings of the Engineering Technicians' Co-operative Societies shall, by virtue of this Ordinance, stand transferred to and vested in the Government, and the societies shall be deemed to have been dissolved.

4. *General effect of vesting.*—(1) The undertakings of the societies shall be deemed to include all assets, rights, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve fund, investments and book debts, letters of intent, licences and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the societies in relation to their undertakings, and all books of account, registers and all other documents of whatever nature relating thereto, and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the societies in relation to their undertakings and their employees.

(2) All contracts and working arrangements which are subsisting immediately before the appointed day and affecting any of the societies shall, in so far as they relate to the undertaking of that society, cease to have effect or be enforceable against that society or any officer thereof or any person who was surety or had guaranteed the performance thereof, and shall be of as full force and effect against or in favour of the Government and may be enforced or acted upon as fully and effectually as if, instead of the society, the Government had been named or had been a party thereto.

(3) Any proceeding or cause of action pending or existing immediately before the appointed day by or against any of the societies in relation to its undertaking may, as from that day, be continued and enforced by or against the Government as it might have been enforced by or against the society if this Ordinance had not been promulgated, and shall cease to be enforceable by or against the society, its officers, sureties or guarantors.

5. *Duty to deliver possession of property acquired and documents relating thereto.*—(1) Where any property has vested in the Government under this Ordinance, every person, in whose possession or custody or under whose control the property may be, shall deliver the property forthwith to the Government or to such person as the Government may authorise in this behalf.

(2) Any person who, on the appointed day, has in his possession or under his control any books, documents or other papers relating to the undertakings of the societies which have vested in

the Government under this Ordinance, shall be liable to account for the said books, documents and papers to the Government and shall deliver them up to the Government or to such person as the Government may authorise in this behalf.

(3) The Government may take, or cause to be taken, all necessary steps for securing possession of all properties which have vested in the Government under this Ordinance.

6. *Duty to furnish particulars.*—(1) Notwithstanding anything contained in section 7, the Government may direct the Managing Director of the ENCOS and any other officer or employee employed in connection with the affairs of the undertaking of any of the societies immediately before the appointed day to furnish to the Government within one month from the appointed day or such further period as the Government may allow in this behalf, a complete inventory of all the properties and assets of the societies on the appointed day, all the liabilities and obligations of the societies subsisting on that day and also all agreements entered into by the societies and in force on that day (including agreements, whether express or implied, relating to leave, pension, gratuity and other terms of service of officers or other employees of the societies) under which, by virtue of this Ordinance, the Government have or will have or may have liabilities or obligations.

(2) The Managing Director of the ENCOS and the officers and employees required to furnish the inventory under sub-section (1) shall, for the period referred to in that sub-section, be entitled to the same salaries and allowances and be subject to the same conditions of service as they were entitled or subject to immediately before the appointed day.

7. *Termination of service of existing employees.*—(1) The services of every officer or other employee employed, immediately before the appointed day, in connection with the affairs of the undertaking of any of the societies, except officers and other employees of the Central Government or the Government of Kerala on deputation, shall, as from the appointed day, stand terminated.

(2) Any officer or other employee of the Central Government or the Government of Kerala deputed for employment in connection with the affairs of the undertaking of any of the societies and employed as such immediately before the appointed day shall, as from that day, revert to the service of the Central Government or the Government of Kerala, as the case may be.

(3) Notwithstanding anything to the contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force, no person whose services stand

terminated by virtue of sub-section (1) shall be entitled to any compensation or other payment under that Act or such other law and no claim for such compensation or payment shall be entertained by any court, tribunal or other authority.

(4) Notwithstanding anything contained in sub-section (3), every officer or other employee appointed under a contract executed by him and any of the societies, shall be paid the amount to which he is entitled under such contract.

(5) The amount payable to an officer or employee under sub-section (4) shall be paid by the Director of Industries and Commerce in cash within a period of three months from the appointed day:

Provided that if the amount is not paid within the period aforesaid, the Director of Industries and Commerce shall pay interest on the amount at the rate of four per cent per annum from the date of expiry of the said period.

8. *Payment of amount.*—(1) For the transfer under section 3, of the undertakings of the societies to the Government, there shall be paid by the Government to every shareholder of each of the societies an amount equal to the value of the shares held by him in the society immediately before the appointed day.

(2) Notwithstanding anything contained in sub-section (1), where a member-employee has obtained a loan from any bank for purchase of shares in any of the societies and the society has stood surety for such loan with interest thereon or has undertaken to recover the loan from the salary of the member-employee, the balance, if any, of the loan together with interest remaining outstanding on the appointed day shall be paid by the Government to the bank and the member-employee shall be paid only the balance after deducting the amount paid to the bank under this sub-section from the amount to which he is entitled under sub-section (1).

(3) The amount payable to a shareholder under this section shall be paid by the Director of Industries and Commerce in cash within a period of three months from the appointed day on production and surrender of valid share certificates issued by the societies:

Provided that if the amount is not paid within the period aforesaid, the Director of Industries and Commerce shall pay interest on the amount at the rate of four per cent per annum from the date of expiry of the said period.

9 *Penalties.*—(1) Any person who—

(a) having in his possession, custody or control any property forming part of the undertaking of any of the societies wrongfully withholds such properties from the Government; or

(b) wrongfully obtains possession of any property forming part of the undertaking of any of the societies, which has vested in the Government under this Ordinance; or

(c) wilfully withholds or fails to furnish to the Government as required by sub-section (2) of section 5 any books, documents or other papers which may be in his possession, custody or control,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that the court trying any offence under clause (a) or clause (b) or clause (c) may, at the time of convicting the accused person, order him to deliver up or refund, within a time to be fixed by the court, any property or cash wrongfully withheld or obtained or any document wilfully withheld or not furnished.

(2) No court shall take congnizance of an offence punishable under this section except with the previous sanction of the Government or of an officer authorised by the Government in this behalf.

10. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due dilgence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

11. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other person for anything which is in good faith done or intended to be done under this Ordinance.

(2) No suit or other legal proceedings shall lie against the Government or any officer or other person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

12. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the provisions of this Ordinance.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

N. N. WANCHOO,
GOVERNOR.